IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.113 OF 2005 WITH 719 OF 2005
IN
EXECUTION APPLICATION NO.467 OF 2004
IN
APPEAL NO.27-A OF 2002

Mr. H.G. Bajaj. ..Appellant.
Vs.
T.J. Stock Broking Services Pvt. Ltd.
..Respondent.

Mr.Ravi Goenka i/by Prasad Das for the Appellant.

Mr. Bali i/by Thakkar & Bali for the Respondent.

CORAM : A.M. KHANWILKAR, J.
DATED : 19/7/2005.

P.C.:

1. The former chamber summons is taken out by the Judgment debtor. It is prayed that this court order that the award dated 16.1.2003 passed by the Appellate Bench of the Stock Exchange, Mumbai in Appeal No.27-A of 2002 be marked satisfied. It is further prayed that warrant of attachment dated 10.12.2004 issued by this court in respect of the bank account of the applicant/Judgment debtor be set aside.

2. The other chamber summons is taken out by the

Judgment Creditor for directions that he may be permitted to withdraw amount of Rs.3,40,162.40ps. deposited in Execution Application No.467/2004 with the Office of Sheriff of Bombay on Judgment Creditor submitting a bank guarantee of an equivalent amount to the Prothonotary and Senior Master of this court till the final disposal of the chamber summons.

3. Both these chamber summonses can be disposed of by this common order. The background in which the above chamber summonses are taken out is that, an award is passed by Stock Exchange against the Judgment debtor on 16.1.2003, where under the Judgment debtor is required to pay sum of Rs.2,42,367.40ps. alongwith interest quantified at Rs.37,416.72ps., from the account of the Judgment debtor, which in turn would be payable to the Judgment Creditor. Those steps have been taken on 7.3.2003. This position is substantiated from the correspondence letter Exh.A annexed to the chamber summons filed by the Judgment Debtor. Consequent thereto, Stock Exchange, instead of paying the said amount to the account of the Judgment Creditor, however, by its decision dated 13.8.2003, decided to set apart the said amount to be made over to M/s.Mahico Pvt. Ltd. towards the liability of the

Judgment Creditor qua that party. This position can be discerned from the letter. Exh.B.

4. The first question is, whether Judgment debtor is still liable to satisfy the award passed by the Stock Exchange dated 16.1.2003. On the admitted facts on record, I have no hesitation in taking the view that the Judgment Debtor is absolved of this liability or obligation to satisfy that the said award. This is so because, the amount referred to in the award having been set apart by the stock exchange from the account of the Judgment debtor, absolved him from all further liabilities and obligations in respect of the monies and securities deposited, in terms of Rule 232(b) of the Stock Exchange Rules. The said rule reads thus :

> (b) On the application of a creditor member who refers or has referred to arbitration his claim against the defaulting constituent as provided in these Bye laws and Regulations the Secretary shall issue orders against any member or members restraining him or them from paying or delivering to the defaulting constituent any moneys or securities upto an amount or value not exceeding the creditor member's claim payable or deliverable by him or them to the defaulting constituent in respect of transactions entered into subject to the rules, Bye laws and Regulations of the Exchange. On receipt of such order the

> member of members concerned shall forthwith deposit and the defaulting constituent shall be deemed to have authorised the member or members concerned so to deposit with the Exchange such moneys and securities after satisfying his or their own dues if any arising out of transactions made subject to the Rules, Bye laws and Regulations of the Exchange. Such deposit shall release the depositing member or members from all further liability and obligation to the defaulting constituent in respect of the moneys and securities deposited by him or them. The application of the creditor member pursuant to which the moneys and securities are deposited with the Exchange shall be deemed to form a part of the aforesaid reference to arbitration of his claim against the defaulting constituent. The moneys and securities deposited shall be disposed of in terms of the award in arbitration and pending a decree shall be deposited with the court when filing the award unless the creditor member and the defaulting constituent mutually agree otherwise." (emphasis supplied)

5. Thus understood, it will necessarily follow that the Judgment Debtor has satisfied the award passed against him dated 16.1.2003, save and except to the liability arising post Award. The Award was passed on 16.1.2003; whereas, the amount is adjusted from the account of the Judgment debtor purportedly on 7.3.2003. For the said intervening period the Judgment Creditor would become entitled to statutory interest, unless the Award provides to the contrary. In that sense, the Judgment debtor at-best will be liable to pay the amount towards the statutory

interest for the post Award period, notwithstanding setting apart the Award amount from his account by the Stock Exchange purportedly on 7.3.2003.

6. The limited grievance that requires to be addressed is, whether it is possible to take the view that the entire award is satisfied by the Judgment debtor. It is seen that the Stock Exchange has set apart the aggregate amount of Rs.2,95,884.12ps. from the account of the Judgment debtor towards the satisfaction of the award in question. The claim of the Judgment creditor as on 31.5.2003 is to the extent of Rs.2,88,213.22ps. only, which can be discerned from the letter sent by the Judgment Creditor in May, 2003 to the Judgment debtor. According to the Judgment debtor, Stock Exchange has already set apart excess amount than the amount claimed by the creditor that too in March,2003 itself. It is not necessary for me to dilate on this question as the Stock Exchange in its letter dated 7.3.2007 has observed that the Judgment debtor will be liable to pay to the Judgment Creditor from the date of liquidation of its assets till the date of payment of the award amount to the awardee which will be recoverable from the Judgment

debtor by the Stock Exchange. Accordingly, if the Stock Exchange finds that any further amount is payable to the Judgment creditor by the Judgment debtor towards the future interest, if any, it will be open to the stock exchange to proceed against the Judgment debtor in that behalf, after giving notice to concerned parties and giving them opportunity. The counsel for the Judgment debtor fairly accepts that if any amount is still due and payable by the Judgment debtor towards the future interest and if so decided by the Stock Exchange, the Judgment debtor will abide by the said order as and when passed.

7. Accordingly, the Chamber summons taken out by the Judgment Debtor deserves to be partly allowed in terms of prayer clause (a) and (b). As the Judgment debtor would partly succeed as mentioned above, it necessarily follows that subsequent warrant of attachment issued by this court on 10.12.2004 cannot be given effect to. Accordingly, the Chamber Summons taken out by the Judgment debtor ought to succeed in terms of prayer clause (c).

8. The next question that remains to be considered is, what relief can be granted to the Judgment

creditor. The Judgment creditor seeks to enforce the award by withdrawing amount of Rs.3,40,162.40 on the assumption that the award passed against the Judgment debtor is still unsatisfied. As mentioned earlier, requisite amount referred to in the award dated 16.1.2003 is already deducted from the account of the Judgment debtor by the Stock Exchange. It is, therefore, not open to the Judgment creditor to proceed against the Judgment debtor in respect of the said award. To over come this position, the counsel for the Judgment Creditor would contend that the Stock Exchange has set apart the amount referred to in the award, but the same has not been made over to the Judgment Creditor. That grievance however, cannot be the basis to permit the Judgment Creditor to proceed against the Judgment debtor. The remedy for the Judgment creditor is to question the action of the Stock Exchange in remitting the amount in favour of M/s. Mahico Pvt. Ltd. in satisfaction of the claim against it. That issue cannot be gone into in the present petition. It will be open to the Judgment creditor to raise that issue in the appropriate proceeding, if so advised. That question is left open to be decided in such proceeding as and when occasion arises.

9. Accordingly, both the chamber summonses are disposed of by passing the following order.

ORDER

a) Chamber Summons No.113 of 2005 is partly allowed as referred to above in terms of prayer clause (a),(b) and (c) with no order as to costs. The question of future interest (Post Award period) is left open.

b) Chamber Summons No.719 of 2005 is also disposed of with liberty to the Judgment creditor to take recourse to such remedy as may be permissible by law. No order as to costs.

c) It will be open to the Judgment Debtor to withdraw the amount lying with the Sheriff of Mumbai in view of the undertaking given by the Judgment Debtor through its counsel that the Judgment debtor will forthwith bring back the proportionate amount to the extent of future interest (Post Award period) if determined by the stock exchange to be recoverable from the account of the Judgment debtor.

. Ordered accordingly.

(A. M. KHANWILKAR, J.)